

RHARRC ASSOCIATES

IBLA 81-1106

Decided October 22, 1982

Appeal from decision of Montana State Office, Bureau of Land Management, denying petition for reinstatement of noncompetitive oil and gas lease. M-42667 Acq.

Affirmed.

1. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Termination

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that the failure to make timely payment was justifiable. A late payment will not be excused where payment was transmitted after the due date and the lessee asserts that he was unaware of the appropriate due date.

APPEARANCES: Richard L. Rohrer, Partner, RHARRC Associates, Honolulu, Hawaii, for appellant.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

RHARRC Associates has appealed from a decision of the Montana State Office, Bureau of Land Management (BLM), dated August 31, 1981, denying its petition for reinstatement of noncompetitive oil and gas lease, M-42667 Acq., which terminated by operation of law for failure to pay the annual rental timely.

Appellant's drawing entry card was drawn with first priority for parcel MT 308 in the December 1978 simultaneous oil and gas lease drawing. Because of the omission of certain entry cards from that drawing, a redrawing was held in March 1980. By notice dated April 25, 1980, appellant was informed that it was entitled to an oil and gas lease as to parcel MT 308 and that

payment of the first year's rental "must be received in this office within fifteen (15) days from receipt of this Notice." On May 7, 1980, BLM received the first year's rental payment.

By decision dated April 25, 1980, and notice dated May 9, 1980, BLM required appellant to complete, sign, and return a disclosure statement, a certificate of qualifications, certain stipulations and other pertinent documents in part in order to determine appellant's qualifications to hold a Federal oil and gas lease. These documents were received by BLM on May 23 and 27, 1980. On July 28, 1980, an oil and gas lease was issued to appellant, pursuant to section 2 of the Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. § 351 (1976). The lease indicated that the "[e]ffective date" was August 1, 1980. Moreover, section 2(e) of the lease stated that "[i]f there is no well on the leased lands capable of producing oil or gas in paying quantities, the failure to pay rental on or before the anniversary date shall automatically terminate the lease by operation of law."

On August 10, 1981, BLM received payment of the second year's rental for oil and gas lease M-42667 Acq. The check, dated August 1, 1981, was enclosed in an envelope postmarked August 5, 1981. By notice dated August 13, 1981, BLM notified appellant that its oil and gas lease had terminated by operation of law for failure to pay the annual rental timely.

On August 24, 1980, appellant petitioned for reinstatement of its oil and gas lease, contending that failure to pay the annual rental timely was justifiable and not due to a lack of reasonable diligence. Appellant stated that payment of the first year's rental was made by Stewart Capital Corporation (Stewart Capital) and that it subsequently received a BLM receipt which indicated that the rental had been paid on May 7, 1980. This date "was placed on the index card which is used by RHARRC as a reminder for rental payment information." Petition, at 2. Appellant further stated:

The fact that the final effective date of the lease was August 1, 1980, was not sufficient to raise a question as to a change in the lease rental payment date and the tickler card date remained as May 7. Usually Stewart Capital sends a reminder letter and most state offices of the BLM send a statement approximately a month before the lease rental due dates - none were received with respect to the August 1 rental date for M-42667.[1/]

Petition, at 2-3. Appellant subsequently realized on August 4, 1981, that payment had not been made on oil and gas lease M-42667 Acq. and promptly mailed the payment. Appellant concluded:

1/ Appellant stated that it had informed BLM by letter dated Aug. 18, 1980, that it wished to change its address of record to P.O. Box 939, Honolulu, Hawaii 96808. The previous address had been the address of Stewart Capital. In its August 1981 decision, BLM stated that it never received appellant's request.

We assure you that our failure to pay the rent before August 1, 1981 was the result of confusion involving a variety of dates beginning with the redrawing, due to entry cards inadvertently omitted in the drawing, the moratorium of all activity for a period of time by the U.S. Department of the Interior, the May advance payment of rent, your rental receipt dated May 7, 1980, a breakdown of procedures with Stewart Capital and our failure to note that the August 1 effective date of the lease would be the date upon which the lease rent was due in 1981.

Petition, at 3.

In its August 1981 decision, BLM rejected appellant's petition for reinstatement, concluding that failure to pay timely was not justifiable and that reasonable diligence had not been shown. BLM stated that until issuance of an oil and gas lease "the anniversary date and rental due date is not established." BLM noted that a copy of the lease "showing the anniversary date was mailed to you at your address of record at the time of issuance," and, thus, "misinformation as to the due date cannot be considered justifiable." ^{2/} BLM also stated that while the notice of rental due may have been sent to the wrong address and that this caused the late payment, this was not a justifiable excuse. Finally, BLM stated that mailing the rental payment after the due date cannot be considered reasonable diligence.

In its statement of reasons for appeal, appellant asserts that termination of its oil and gas lease where one rental payment was not received on or before the due date is unduly severe and does not comport with "the norms now established by the other departments of the government."

[1] An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities terminates by operation of law if the lessee fails to pay the annual rental "on or before the anniversary date of the lease." 30 U.S.C. § 188(b) (1976) (emphasis added); see 43 CFR 3108.2-1(a). Congress has authorized reinstatement of a terminated lease only if, among other requirements, the lessee shows that a failure to pay on time was either justifiable or not due to lack of reasonable diligence. 30 U.S.C. § 188(c) (1976); 43 CFR 3108.2-1(c).

The applicable regulation, 43 CFR 3108.2-1(c), states that "[r]easonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment." (Emphasis added.) Mailing a rental payment after the anniversary date will not be considered reasonable diligence. Elizabeth A. Hanson, 65 IBLA 204 (1982). In the

^{2/} The record also contains a copy of "Notice of Payment Due," which indicates that appellant was required to pay the second year's rental by Aug. 1, 1981. The address given on the notice is that of Stewart Capital. The notice was presumably sent to appellant at that address prior to the rental due date. There is no evidence that Stewart Capital transmitted the notice to appellant.

present case, the first "anniversary date" of appellant's oil and gas lease was August 1, 1981, 1 year after the effective date of issuance of the lease. Appellant's rental payment, however, was not mailed until August 5, 1981, 4 days after the due date. This cannot be considered reasonable diligence.

A late rental payment will also be excused where the failure to pay timely can be considered "justifiable," i.e., where it was caused by sufficiently extenuating circumstances, outside the lessee's control, which occurred in close proximity to the anniversary date. Thomas H. Wilson, 61 IBLA 287 (1982).

We do not believe appellant has provided adequate justification for the late payment. The proximate cause of appellant's failure to pay timely was, as stated by appellant, "our failure to note that the August 1 effective date of the lease would be the date upon which the lease rent was due in 1981." Appellant, as the lessee of record, is presumed to know the anniversary date and terms of the lease, as well as the requirements of the relevant statute and duly promulgated regulations. Alice M. Conte, 46 IBLA 312 (1980). Accordingly, ignorance will not be considered a justifiable excuse for a late payment. Id. Where the primary responsibility for paying the rental rested with appellant, it cannot properly attribute its failure to pay timely to the possible failure of Stewart Capital to pass along the BLM notice of payment due. 3/ Alice M. Conte, supra. Moreover, appellant has not explained why, if its records indicated that the lease date was May 7, 1980, no rental payment was tendered prior to May 7, 1981. Such a payment, perforce, would have been prior to August 1, 1981, and would have met appellant's obligation to timely pay the advance rental.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

James L. Burski
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Bruce R. Harris
Administrative Judge

3/ Similarly, appellant is not excused by the possible failure of BLM to send the notice directly to it, even had BLM received the change of address. Reliance on receipt of a courtesy billing notice from BLM does not relieve the lessee's obligation to pay the rental timely. Alice M. Conte, supra, and cases cited therein.

